

COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE
AND FIRE
JLMC-06-19F

IN THE MATTER OF ARBITRATION BETWEEN:

CITY OF NEWTON

&

IAFF LOCAL 863

AWARD AND DECISION BY THE ARBITRATION PANEL

Background

The City of Newton ("City" or "Employer") and Local 863 IAFF ("Union") are parties to a Collective Bargaining Agreement ("Agreement") that expired June 30, 2003. The parties engaged in direct negotiations but were unable to reach a successor Agreement. Initially, the parties' negotiations focused on a three-year successor Agreement to the Agreement that expired on June 30, 2003. A petition for mediation was filed with the Massachusetts Joint Labor Management Committee ("JLMC"). On November 16, 2006 the JLMC exercised formal jurisdiction of the ongoing dispute between the City and the Union.

On April 19, 2007 the Committee determined that the parties had been unable to resolve their differences and that there was "an apparent exhaustion of the process of collective bargaining" which constitutes "a potential threat to public welfare." The JLMC stated:

The Committee notifies the parties that it invokes the following procedures and mechanisms for the resolution of the collective bargaining negotiations.

1. The Committee authorized the dispute to be submitted to Mediation/Arbitration, by an outside neutral mediator/arbitrator.
2. The neutral Mediator/Arbitrator shall first schedule and conduct mediation sessions as he deems appropriate.
3. In the event that Mediation does not result in the settlement of all open issues, the mediator/arbitrator shall secure a date from the parties and report back to the Committee on the remaining issues and the status of the dispute. The dispute shall then be submitted to interest arbitration to be conducted by the outside neutral Arbitrator, who will serve as Chairman of the Arbitration Panel.

Subsequently, the Committee further VOTED to appoint Gary D. Altman, Esquire, as the neutral Mediator/Arbitrator in this case.

In addition the Committee decided that if the dispute is submitted to arbitration then Robert B. McCarthy, President of the Professional Fire Fighters of Massachusetts would serve as the Union Representative and Mayor Dean J. Mazzarella, would serve as the Management Representative of the tri-partite panel. Mediation sessions were conducted by Arbitrator Altman on May 9, 15, and 24, July 19, August 3, 14, 16, and 28 and September 4, 2007. Progress and tentative agreements were reached on a number of proposals, but an overall agreement was not reached, and Arbitrator Altman reported back to the Committee that no further mediation sessions were to be scheduled.

On October 5, 2007 the Committee wrote to the parties that the Committee had unanimously voted that the

"mediation process ... has concluded and that the case be moved to conventional arbitration". The Committee further directed that the parties submit their list of unresolved issues and their positions on each issue, as well as previously agreed upon issues to the Committee. The parties submitted their positions to the Committee. On December 6, 2007 the Committee again wrote to the parties, stating:

Upon review of the parties written submission, it appears that the parties reached a number of tentative agreements during the negotiation and mediation process. Those matters are as follows and should be incorporated into the parties' successor Agreement. These matters will not be subject to the Arbitration Process:

1. PREVIOUSLY AGREED UPON ISSUES (NOT SUBJECT TO ARBITRATION)

DURATION:

Fiscal Year 2004 through Fiscal Year 2007, Fiscal Year 2007 through Fiscal Year 2009

SALARIES:

July 1, 2003	Plus 2.0%
July 1, 2004	Plus 2.0% (Applied after \$150.00 adjustment to top step)
July 1, 2005	Plus 2.5% (Applied after \$50.00 adjustment to top step)
January 1, 2006	Plus 1.0%
June 30, 2006	Plus 0.5%

July 1, 2006	Plus 2.0%
July 1, 2007	Plus 2.0%
January 1, 2008	Plus 1.0%
July 1, 2008	Plus 2.0%
January 1, 2009	Plus 1.0%

HEALTH INSURANCE:

City Pattern, effective December 1, 2003, as reflected on Exhibit A to City, May 24, 2007, Proposal (E.)

INTER-STATION SWAPS

RETURN TO WORK FOR PARTIAL TOURS OF DUTY (PARTIAL SICK TOURS)

CHANGE THE REFERENCE TO UNION TO LOCAL 863

DELETE FIRE ALARM OPERATORS FROM BARGAINING UNIT. ¹

2. ITEMS FOR CLARIFICATION. (MAY BE SUBMITTED TO ARBITRATION)

Upon review of the parties' submissions, it appears that although full agreement was not reached upon a number of subject matters, the parties agreed in concept and that language still needs to be clarified for final agreement. If these matters are not agreed upon prior to the Arbitration Hearing then the matter may be submitted to Arbitration:

DIRECT DEPOSIT:

Salary payments will be made by direct deposit into bank or credit union account of employee choice for newly hired employees. Issue in dispute is whether it included stipends.

DRIVER'S LICENSE:

In order to drive a Fire Department motor vehicle, employees must maintain a valid Massachusetts driver's license. Issue in dispute is impact of suspension and revocation of driver's license.

SINGLE TOURS OF VACATION

Parties have agreed to single tour vacation.
Disagreement exists over carry over of vacation.

In addition the Committee directed the parties to submit no more than nine other discrete issues that each of the parties could choose to submit to arbitration. The

¹ As the JLMC indicated in its December 7, 2007 letter, these items have been agreed upon. Accordingly, these issues will not be addressed in this Decision. Nevertheless, these items are incorporated into the AWARD.

Union submitted the following list of issues to the Committee:

1. Salary: Implementation of 4th Step effective 7/1/2003
2. Detail Rates
3. EMR Stipend
4. Educational Incentive
5. Longevity
6. Training Compensation
7. Sick Leave
8. Filling of Vacancies
9. Injury Leave

The City submitted the following issues to the Committee:

1. Random Drug and Alcohol Testing Program
2. Eliminate Winter Manning
3. Shift Differential
4. Fire Prevention and Training Division Stipends
5. Twelve Hour Shifts
6. IOD Policy
7. Delete Evergreen Clause
8. Semi-monthly payrolls
9. Out of Grade pay issue

An Arbitration hearing was held in Newton Massachusetts, on March 1, 2008 before the tripartite panel. At the hearing the City was represented by Keith McCowan, Esq., and Joseph P. McConnell, Esq. The Union was represented by E. David Wanger, Esq. The parties presented substantial documentation in support of their respective positions. After the close of the hearing, the parties had opportunity to submit additional data. Final briefs were received June 27, 2008.

Analysis and Issues

Under the Collective Bargaining Laws of Massachusetts, the Interest Arbitration process is utilized when "there is an exhaustion of the process of collective bargaining which constitutes a potential threat to public welfare". In reaching the conclusions in the present award, the arbitration panel has considered the criteria set forth in the statute including the municipality's ability to pay, wages and benefits of comparable towns, and the cost of living. It must also be noted that large gains or major concessions are not achieved in the format of arbitration. An arbitrator is reluctant to modify contract provisions where the parties in past years have already reached agreement, the contract article has been in the contract for a considerable period of time and there has been no ascertainable problem with the contract language.

In addition in a 1993 Interest Arbitration Award between the parties Arbitrator James Healy stated, "This Board must necessarily be guided to some extent by settlements reached in other units and particularly in the police unit because of the protective service affinity of the two groups. Thus, absent a very compelling reason for variation, one would expect the salary adjustment levels to be much the same." The concept of parity, for wages and benefits has been a long-standing practice of Newton Police and Firefighters, and is the benchmark that has guided this tri-partite arbitration panel. It is within this framework that the arbitration panel has considered the parties' proposals.

Issue of Clarification

- | | |
|------------------------|------|
| 1. Direct Deposit | p. 7 |
| 2. Driver License | p. 8 |
| 3. Vacation Carry-Over | p. 9 |

Union Issues

- | | |
|--|-------|
| 1. Salary: Implementation of 4 th Step 7/1/2003 | p. 10 |
| 2. Detail Rates | p. 14 |
| 3. EMR Stipend | p. 16 |
| 4. Educational Incentive | p. 19 |
| 5. Longevity | p. 21 |
| 6. Training Compensation | p. 22 |
| 7. Sick Leave | p. 24 |
| 8. Filling of Vacancies | p. 38 |
| 9. Injury Leave | p. 40 |

City Issues:

- | | |
|--|-------|
| 1. Random Drug and Alcohol Testing Program | p. 41 |
| 2. Eliminate Winter Manning | p. 46 |
| 3. Shift Differential | p. 50 |
| 4. Fire Prevention and Training Division Pay | p. 52 |
| 5. Twelve Hour Shifts | p. 52 |
| 6. IOD Policy | p. 55 |
| 7. Delete Evergreen Clause | p. 59 |
| 8. Semi-monthly payrolls | p. 60 |
| 9. Out of Grade pay issue | p. 61 |

ISSUES OF CLARIFICATION

1. Direct Deposit

The City proposed to implement direct deposit for employees pay, and the Union has agreed to direct deposit for newly hired employees. The remaining issue is whether direct deposit should also include stipends.

Discussion

The record shows that at the present time Newton Police still receive separate checks for stipends during designated payroll periods over the course of the year. There is no legitimate reason why this practice of separate

checks for stipends, as is the case for Newton Police, should not apply for Newton Firefighters.

AWARD - DIRECT DEPOSIT

Direct deposit of the salary for newly hired employees shall occur after execution of the terms of this Award; direct deposit shall not include stipend, which shall be paid in separate paychecks of the course of the year.

2. Drivers License

During this round of contract negotiations the City sought to add language that having a Massachusetts drivers license was a condition of employment, and that should an employee lose his or her license, the employee must report this to the Chief within 24 hours.

Union Position

The Union has agreed that an employee should notify the Chief of a loss of license, but sought to add language that an employee losing his or her license cannot in and of itself be the basis of discipline, and that the employee is to remain employed in a non-driving capacity.

City's Position

The City opposes the additional language proposed by the Union.

Discussion

The City's proposal that an employee must notify the Chief of loss of license is reasonable and will be awarded. The panel will not add any further language as to the consequences that could occur upon loss of license. As to whether discipline should be imposed is a matter that would depend upon the existing practice of the Department and

should the City impose discipline recourse would be through the grievance arbitration provisions of the Agreement.

AWARD - DRIVERS' LICENSE

Added to the agreement will be a provision that provides that an employee shall notify the Chief or his designee of loss or suspension of one's license prior to the employee's next work shift after the loss or suspension of license.

3. Vacation Carry-Over

The parties have agreed to single tours of vacation. The remaining issue is whether vacation tours may be carried over into the next year.

Union's Position

The Union proposes that firefighters be permitted to carry over five tours of vacation to the next calendar year provided that the days are taken prior to March 31st of the following year. The Union states that it is seeking the same carry over that now exists for Newton Police Officers.

City's Position

The City opposes the Union's position.

Discussion

At this time the Panel will not award the Union's proposal for carry over of vacation tours. The panel does not know the impact that vacation carry over will have on staffing of the Department. With one year left in this agreement, this is a matter that can be addressed in the next round of contract negotiations.

AWARD - VACATION CARRY-OVER

The Union's proposal for vacation carry over is not awarded at this time.

UNION ISSUES

1. Salary - Implementation of new 4th Step 7/1/2003

As of the last three-year Fire Agreement (July 1, 2000 - June 30, 2003) fire fighters had a three-step schedule. The weekly rate for the third step as of June 30, 2003 was \$837.99.

The City of Newton and Newton Police Union similarly had a three-step salary schedule. Effective July 1, 2001 the City and Newton Police Union agreed to add a fourth step to the police agreement. The 4th step is 1.5% above the third step. As of June 30, 2003 the third step was \$838.90 and the 4th step was \$851.48.

Union Position

The Union proposes that the firefighter salary schedule be increased by an additional 1.5% effective July 1, 2003, the first date of the successor Agreement. The Union contends that during mediation the City was not opposed to adding this new 4th step. Moreover, the Union states that basic parity between the fire and police justify adding this new 4th step for firefighters as the City and Police agreed to this new step July 1, 2001. The Union disputes the City's view that the EMR stipend of 1.5% agreed to with the Firefighters was the equivalent of the 1.5% increase provided to the police officer's wage schedule. Specifically, the Union states that at the same time that the City agreed to the additional step for police it also agreed to add the \$600.00 technology stipend for police officers, which was the equivalent to the 1.5% EMR

stipend provided to the firefighters. The Union contends that to preserve basic wage parity between the two groups a new 1.5% 4th step should be added to the firefighter's agreement.

City Position

The City opposes the Union's request to add the additional 4th step, which would be 1.5% above the third step of the Agreement. The City maintains that there is basic parity between wages and benefits and that a new step 4 for firefighters is not justified.

The City states that the firefighters were the first to reach an agreement for the 2000 - 2003 contract period, and the fire agreement provided for a 3% wage increase each year for the three year period; a 1.5% EMR stipend applicable to the base rate of all firefighters effective July 1, 2001, an EMT stipend of \$600.00 and an enhanced longevity plan. The police union came to agreement with the City in April of 2002 and agreed to the 3% annual wage increase, a new 4th step, which was 1.5% increase to the base, a \$600.00 technology stipend and an enhanced longevity plan for long serving police officers effective July 1, 2002.

The City thus maintains that for the 2000-2003 Agreement the Newton Police and Newton Firefighter agreements were in basic parity: 3% wage increases for each of three years; a 1.5% increase to base salary (the EMR 1.5% to be applied to base wages for firefighters and for police a new 4th step which was 1.5% increase); \$600 EMT stipend for firefighters and \$600 technology stipend for the police. Both groups received a variation of the enhanced longevity plan. The City contends that the Union's

justification to add a new 4th step is therefore not justified as the firefighters received the equivalent benefit by virtue of their 1.5% to the base EMR payment.

The City concludes that to now provide a new 4th step would actually place the firefighters in a better situation *vis a vis* base pay than their police colleagues and would result in police later claiming that fire fighters received an increase that the police never received. The City concluded that there is no justification to add this 4th step.

Discussion

At first glance, based on the principle of basic salary parity, it would appear that the Union's position is justified; the police have four steps and the firefighters have three steps. The 4th step of the police agreement is 1.5% more than the 3rd step of the police wage schedule. It is important to consider the settlement of firefighters and police for the 2000-2003 Agreement, when the 4th step was agreed to. Specifically, effective July 1, 2001 the firefighters received a new EMR stipend that was 1.5% of base pay of firefighters. In addition firefighters received an annual \$600.00 EMT stipend. The police agreement was reached a year later. Police received a new 4th step 1.5% above the third step, and also received a training stipend of \$600.00. Both of these increases for police, as was the case for Newton firefighters, were effective July 1, 2001.

A comparison of salaries and stipend of Newton Police and Newton Firefighters shows the following:

BASE PAY ADJUSTMENTS

July 1, 2001

<u>Fire</u>	
July 1, 2001 3 rd step	\$813.00
EMR Stipend 1.5% to base pay	<u>\$ 12.19</u>
TOTAL	\$825.19

<u>Police</u>	
July 1, 2001 3 rd Step	\$814.46
Police July 1, 2001 4 th Step	\$826.68

July 1, 2002

<u>Fire</u>	
July 1, 2002 3 rd step	\$837.99
EMR Stipend 1.5% to base pay	<u>\$ 12.57</u>
TOTAL	\$850.55

<u>Police</u>	
July 1, 2002 3 rd Step	\$838.90
Police July 1, 2002 4 th Step	\$851.48

ANNUAL STIPENDS

<u>Fire</u>	
Defibrillator	\$425.00
EMT (7/1/01)	\$600.00

<u>Police</u>	
Defibrillator	\$425.00
Technology Differential	\$600.00

As show above, it must be concluded that with the EMR stipend of 1.5% on the base and the police with 1.5% 4th step, there is basic parity on base wages. To now add an additional 4th step for fighters would upset the basic wage

parity. Accordingly, there is no justification to now add a 4th step for fighters at this time.

AWARD - 4TH STEP

The Union's proposal to add a new 4th step to the salary schedule is not awarded.

2. Detail Rates

Newton Firefighters are paid on an hourly basis for working outside paid details. The current detail rate is Firefighter \$30.00, Lieutenant \$32.00, Captain \$36.00, and Deputy Chief \$38.00. Under the current Agreement details will be for a minimum of four hours.

Union Position

The Union proposes that there be one detail rate and the rate be \$40.00 per hour for all details. If a firefighter were working a detail in a supervisory capacity, regardless of rank, the fire fighter would receive an additional \$5.00 per hour. Under the Union's proposal a supervising firefighter would be assigned in those situations in which there is a complement of three non-supervisory employees.

In addition the Union proposes that there be an additional \$5.00 per hour when firefighters work a paid detail on weekends and holidays. The Union further proposes that language be added that provides that there shall be a guarantee of four hours of compensation for every detail lasting four hours or less, eight hours of compensation for every detail lasting more than four hours but eight hours or less, and that for details over eight hours firefighters will be paid on an hourly basis. The Union also proposes

that language be added that details must be assigned to building demolition and all blasting sites.

The Union maintains that its current proposal tracks the detail rates and provisions provided to Newton Police Officers. Specifically, the Union states that the police have one detail rate, unless superior officers are actually supervising other officers during the detail.

The Union further maintains that its proposal requiring a detail at blasting sites is reasonable as certain members volunteered to be trained, and that these members would be eligible for these special details. The Union further states that Needham, a contiguous community, now requires a detail for blasting work in the community.

City Position

The City proposes to increase the detail rate by \$4.00 per hour. The City opposes the Union's proposal to have one detail rate for all classifications, and contractual criteria for when a supervisor is needed for a fire detail. The City also opposes the Union's proposal to require details for blasting sites. The City maintains that its proposal is consistent with the current practice of paying details based on rank and is less burdensome to administer than the Union's proposal.

Discussion

The Union's proposal matches the detail provisions provided to Newton Police Officers; specifically, the single rate of \$40.00 for all officers working a detail, the minimum rates based on hours worked on the detail, and a single detail rate for all ranks, unless the officer is specifically assigned to supervise a detail based on number of officers assigned to the detail. The police agreement

provides that if four officers are assigned, then one superior officer shall be assigned to the detail. There is no legitimate reason why the private detail rates and procedures for Newton Fighters should not be the same as now exists for Newton Police Officers.

The Union also proposes to add language that would require a private detail at building demolition sites and all blasting sites in the City. The Union's proposed language will not be awarded. In particular, the issue of when details are required should be left to the discretion of the City. Moreover, it does not appear that such mandatory details are a prevailing condition of employment, as only Needham Firefighters currently have such language in their Agreement.

AWARD - DETAIL RATES

Article 33 - Paid Details, is amended as follows:

Commencing thirty (30) days after the execution of this Award the applicable hourly rate of pay will be \$40.00. Employees assigned to details shall be guaranteed four (4) hours of compensation at the applicable rate for every detail lasting four (4) hours or less, eight (8) hours of compensation at the applicable rate for every detail lasting more than four (4) hours but eight (8) hours or less, and, shall be so compensated for details over eight (8) hours on an hour for hour basis.

Fire suppression employees holding officer ranks who perform details in a non-supervisory capacity shall receive the applicable firefighter rank rate. For each complement of four (4) non-supervisory suppression employees assigned to a detail, a suppression employee holding acting or permanent officer rank shall be assigned to such detail and shall receive a supervisory hourly premium of five dollars (\$5.00) above the applicable regular hourly detail rate.

3. EMR Stipend

The stipend for Enhanced Medical Response Stipend reads as follows:

Effective, July 1, 2001, in consideration of the upgraded medical response made by firefighters to Newton residents, the parties agree to implement what will be known as the "Enhanced Medical Response" stipend. Said stipend will add 1.5% to the base pay of firefighters. (base pay of a firefighter is defined as the "weekly rate" shown on Appendix A - wage scale.)

Union Position

The Union proposes that the EMR stipend be increased by an additional 1.5% to 3%, and that this increase be effective July 1, 2003. The Union maintains that for the same contract period that the Union and City agreed that effective July 1, 2001 an EMR stipend would be added to the Fire Agreement, the City and Police Union agreed, effective July 1, 2001, to add a \$600.00 technology stipend to the Police Agreement. The Union states that in July 2003, the City and Police Union agreed to increase the technology stipend by \$615.00 to a total of \$1,215.00. To maintain essential compensation parity the Union contends that the EMR stipend for firefighters should now be increased by an additional 1.5% and that this increase should be effective July 1, 2003, the same date that the increase in the technology stipend was provided to the police bargaining unit.

The Union asserts that there is no legitimate reason not to provide an equivalent increase in the EMR stipend for firefighters as was provided to Police for the Technology differential, as the EMR responsibilities for firefighter has increased over this time period.

City Position

The City opposes the Union's position. The City contends that the 1.5% differential for the EMR stipend was provided to firefighters in 2001, and, as stated above, the police received an additional fourth step, 1.5% above the third step, the equivalent of the firefighter's 1.5% EMR stipend. The City maintains that this essential parity continues, and that it would disrupt the parity relationship to provide fire with another percentage increase in the EMR payment since police did not receive any additional steps. The City argues that to provide firefighters with an additional 1.5% increase would result in fire fighters being paid 1.5% in base wages above Newton Police Officers.

Discussion

The Union's contention that the firefighter's EMR stipend should be increased by 1.5% to a total of 3% to match the increase of the police technology differential from \$600 to \$1,215.00, effective July 1, 2003, is not warranted. As discussed above, on the subject of the 4th step, the 1.5% firefighter EMR differential is the equivalent of the police 4th step, which is 1.5% above the third step. In other words, if the 4th step of police salary were increased to 3% there would be justification under the principle of parity, to increase the EMR stipend to 3%. This did not occur for police for the 2003-2006 period.

There can be no dispute that there was an increase in the police technology differential from \$600.00 to \$1215.00 effective July 1, 2003. Under the principle of parity, there is justification to increase a corresponding fire annual stipend by \$615.00. As opposed to adding \$615.00 to

the EMR stipend it would be more appropriate to increase the separate EMT stipend (which is now a flat dollar stipend) from \$600.00 to \$1215.00 and this should be effective July 1, 2003, the same date that police technology differential was increased.

AWARD - EMR (EMT) Stipend

The EMR stipend shall remain at 1.5% of base wages, as is the status quo. The EMT Stipend shall be increased from \$600.00 to \$1215.00 retroactive to July 1, 2003.

4. Educational Incentive

Article XXV of the parties' Agreement provides that firefighters receive \$25.00 per annum per hourly credit. The \$25.00 per hour credit has not been increased since 2001.

Union Position

The Union proposes to increase the per credit amount to \$45.00. The Union states that a \$45.00 per credit hour would equate to \$2,700.00 for an Associates' degree. The Union maintains that Police receive the benefits of the Quinn Bill, which provides payments to officers on a percentage basis of their salary. The Union contends that its proposal to increase the per credit hour would cost the City a little more than the City's costs for an Associate's degree for a police officer. Moreover, the Union states that with the police education costs increasing on a percentage basis the costs for police educational incentive would soon approach the amount provided to firefighters with the Associates degree.

The Union opposes the City's proposal that would raise the incentive by \$5.00 and eliminate the per credit hour

reimbursement and only provide this increased amount if a firefighter attains his or her degree. The Union contends that there is no justification for this disparity in educational benefits for Police and Fire.

City Position

The City proposes to increase the educational incentive by \$5.00 to \$30.00 per credit hour for courses leading to an Associate's degree in fire science, and that this increased amount would only be paid to those firefighters who complete a degree. The City proposes that firefighters who do not obtain a degree would be grand-parented at \$25.00 per hour. The City maintains that it makes more sense to pay the increased amount to those who obtain the recognized degree in fire science.

Discussion

As is the case for most communities the educational incentive pay is considerably different for police and firefighters. Police in Newton have the benefit of the Quinn Bill in which they receive a percentage amount based on the degree that they have earned. Every time there is an increase in base wages a police officer's educational incentive increases. Firefighters in Newton and many of the surrounding communities receive educational stipends in fixed dollar amounts. Anytime there is an increase the parties must negotiate the amount of the increase. The current amount is \$25.00 per hour.

The City seeks to pay firefighters a higher education stipend but conditions this higher payment on a firefighter actually receiving a degree. At the present time there is no requirement for Newton firefighters to actually earn degree to receive the educational stipend. There is

insufficient justification to change the current practice. It is true that police obtain the Quinn Bill educational incentives based upon obtaining the degree. The amount of money available to officers under the Quinn Bill is substantially higher than what is available to firefighters under the per credit hour formula, and does not justify changing the current practice.

The last increase in educational incentive was effective July 1, 2001. Accordingly, there is justification to increase the educational stipend to \$35.00 an hour effective July 1, 2008.

AWARD - EDUCATIONAL INCENTIVE

The educational incentive shall be increased to \$35.00 per hour. There shall be no change in the methodology of paying the firefighter educational incentive.

5. Longevity

The current longevity schedule is set forth in Article 27, and provides the following payments.

10-14 years of service	\$475.00
15-19 years of service	\$575.00
20 years of service	\$675.00

The City and the Police Patrolman and Police Superiors agreed to increase their respective longevity schedules effective July 1, 2005.

Union Position

The Union indicated at the arbitration hearing that it would accept the City's longevity proposal that is based on the increases provided to the Newton patrol officers.

Discussion

Again, this is another benefit in which there has been a history of parity. To preserve the parity relationship on this benefit the patrol officer longevity schedule shall be awarded as of the dates that it was effective for the patrol officers.

AWARD - LONGEVITY SCHEDULE

The longevity schedule set forth in Article 27 shall be amended (retroactive to July 1, 2005) to provide the following payments.

10-14 years of service	\$550.00
15-19 years of service	\$650.00
20-24 years of service	\$975.00
25 years of service	\$1,075.00

6. Training Compensation

There is no training stipend in the parties' current Agreement.

Union Position

The Union seeks a \$500.00 annual training stipend. The Union contends that police received a training stipend effective July 1, 2005 of \$500.00. The Union states that it was told that this amount was provided to police in settlement of litigation. The Union states that it was willing to compromise on the City's proposals such as overtime (which has since been withdrawn) and injury leave procedures. The Union states that to preserve parity on salary and benefits a training stipend of \$500.00 should be awarded to firefighters.

City Position

The City opposes the Union's proposal. The City states that it provided the \$500.00 training stipend as result of settlement of litigation. Specifically, the City states that the Police Union claimed that the City changed the practice of having officers being paid overtime for off-duty training, and instead providing training during regular duty hours. The City maintains that the change saved the City considerable overtime expenditures, which more than made up for the costs of the \$500.00 training stipend. The City states that the firefighters have not offered any cost savings proposals that would fund this new benefit, as was the case with the Police. The City concludes that the Union's proposal should be rejected.

Discussion

The genesis of training stipend for the police was the settlement of litigation brought by the police against the City, which resulted from the City changing the practice of police officer training. The settlement permitted the City to train officers during their regular tours of duty as opposed to training on an overtime basis. This economic change justified adding this benefit for Newton police officers, as the stipend was purportedly less than the overtime costs.

The City, in this arbitration, has proposed certain economic concessions, (such as change in the night differential and winter manning) which perhaps, if awarded, could justify adding a new economic stipend for the firefighters bargaining unit. It is difficult to assess the value of the concessions sought by the City as to whether they would warrant a new stipend. Moreover, in view of the

Panel's determination on these proposed concessions, which will be discussed later in this Decision, there is insufficient justification to grant a new economic benefit without providing cost savings in some other working condition.

AWARD - TRAINING STIPEND

The Union's proposal to add a new training stipend is not awarded.

7. Sick Leave

Article IV of the parties' Agreement contains the various provisions addressing special leave, time in which employees are paid during absences from work, which includes sick leave. Section 4.04 provides that an employee must notify the Chief or his designee for any sick leave, and that "during the absence no salary or wage shall accrue to such employee except during periods of authorized special leave in accordance with this Article". Section 4.07, which reads:

Approval of City Physician required - No salary or wage shall accrue to any employee under Section 4.03 or 4.06 of this Article unless the City Physician shall find that the absence of such employee from duty is justified by reason of sickness or injury.

These are the provisions that are at issue in this proceeding. Also at issue are so called enhanced longevity benefits. The fire fighters had an enhanced longevity program, which was tied to use of sick leave. The Police have an enhanced longevity plan that is not tied to overall sick leave usage of the bargaining unit.

Union Position

The Union has proposed to amend the current sick leave provisions of the Agreement, as described below:

Employees using Special Leave for personal illness, non-job related injury, or sickness in family will call the Newton Fire Department sick line and their assigned station or work site;

The Fire Chief may decide that an employee's receipt of compensation for a sick leave absence will be subject to City Physician approval (the Section 4.07 process), with such decision and approval process undertaken pursuant to the following:

Documented absence shall not be counted or otherwise considered by the Chief;

If the Chief decides to subject an employee's entitlement to compensation to City Physician approval and/or if the City Physician denies such compensation in any given instance, imposition of the City Physician approval process and/or withholding of compensation upon City Physician failure to approve shall not be implemented and shall not occur until after review by Arbitrator Gary Altman;

The standard of arbitral review of the Fire Chief's decision and of the City Physician's failure to approve compensation shall be whether each acted with just and proper cause;

The arbitration hereunder shall be expedited, with immediate submission of dispute to the Arbitrator (no requirement to use pre-arbitration grievance step), with agreement to expedite scheduling, and to complete case in one (1) day, inclusive of submission by oral argument in lieu of written memorandum.

Employees can use special leave for the above related purposes in one-half (1/2) shift segments.

The medical provider documentation as above referenced shall be provided by the employee to the Fire Chief no later than fifteen (15) days after returning to duty, with the health care provider qualifying pursuant to the applicable provisions of the 1993 federal regulations regarding the F.M.L.A. The documentation shall be consistent with employee and family privacy and confidentiality entitlement and shall be viewed only by the Chief of the Department, and/or by the City's Human Resources Director. (Effective upon ratification of contracts.)

(Current Section 4.07 to be replaced by the Local's sick leave proposal, with reimbursement to all unit employees whose compensation was withheld within the context of the City's prior administration of Section 4.07).

Provide for the following alternatives: either an annual sick leave buy back entitlement, effective calendar year 2007, as follows:

Either:

All bargaining unit employees who have a personal accumulation of twenty (20) or more special leave shifts as defined in Sections 4.01 and 4.02 can, during each year of their employment, redeem any amount of such shift accumulation above the number twenty (20) at any time in a calendar year, with each such shift valued for such redemption payment at sixty percent (60%) of weekly compensation.

Or:

Adoption, with appropriate revisions, of the Newton Police EXCEPTIONAL SERVICE RECOGNITION PLAN. The patrolman's unit's Plan (Art. XXVII of the patrolman contract) is appended hereto ("Appendix A") as a template. The subjects requiring revision include, but are not limited to, those relating to work schedule and, special leave accrual and participant count. Using both police units participant count as a proportional comparison, nineteen (19) firefighter unit members can participate in the Plan at anyone time.

The Union states that the process of administering sick leave has been the most contentious issue in these prolonged negotiations, and stems from the City's unilateral decision to require that bargaining unit employees actually visit the City physician, or have the physician review the employee's doctor's note for each and every absence in order to be paid for their absence. The Union maintains that members of the bargaining unit perceive this practice to be unfair as no other City employee has been subject to this standard. The Union maintains that for police, when there was an issue of sick leave abuse, the parties reached agreement that police would have to submit a doctor's note after three consecutive absences, and not for each and every absence as required for Newton firefighters. The Union states that this amended process for administering sick leave for police officers was added to the police agreement.

The Union strongly disputes the City's contention that firefighters have used excessive amounts of sick leave. The Union maintains that overtime expenditures are due to a combination of factors including the decline in the number of fire fighters in the bargaining unit. Moreover, the Union states that shift-manning requirements have been removed from the parties' Agreement. In addition, the City's computations include employees on approved FMLA leave and employees who were incapacitated and later retired from the Department. Finally, the Union states that, as shown by news reports, the City's calculations of firefighter sick leave abuse were erroneous, and that Newton Firefighters do not use more sick days than other

City employees, and should not be subject to standards not utilized for other City employees.

The Union argues that prior to the City's unilateral decision firefighters were not required to submit a doctors note until after three absences, which is the current practice for the police department. The Union states that it grieved the City's unilateral decision to require firefighters to visit the City physician for each and every absence, and there were three days of arbitration before both parties decided to defer the grievance arbitration process and instead submit the dispute to the dispute resolution process of the JLMC.

The Union states that in an effort to resolve this dispute it made several proposals in mediation to accommodate the City's interest in ensuring that bargaining unit employees would appropriately use their sick leave. More specifically, the Union asserts that it came to realize that the City would not delete Section 4.07 from the Agreement, and that in addition, the City would not agree to a process unless the Chief had the discretion to decide in which instances a bargaining unit member must see the City physician. The Union states that what it proposed in return was a process in which an outside arbitrator to ensure the equitable application of sick leave procedure could review the Chief's discretion. The Union contends that its proposal was made in response to a City proposal, and done in an effort to reach mutual agreement on this very contentious subject matter.

The Union further proposes that employees deprived of compensation during the City's unilateral imposition of Section 4.07 be made whole. The Union states that this

proposal is appropriate, as the parties agreed to forego the grievance arbitration on this issue, to instead attempt to resolve the issue in mediation.

In addition the Union proposes that an enhanced recognition (enhanced longevity) program be added to the Agreement. The Union's proposal is based on the same principles set forth in the Exceptional Service Recognition Plan, contained in the Newton Police and Newton Police Superiors' Agreements. The Union maintains that Newton Police and Newtown Police Superiors' plan provides that police officers and police superior officers who have worked for twenty years and have accumulated 150 days of sick leave receive an 8% increase for a thirty-six month period of time. The Union states that its enhanced longevity plan that was eliminated in fiscal year 2003, was contingent on overtime usage, unlike the police agreement. The Union states that it is appropriate that long serving firefighters who have accumulated comparable amounts special leave should receive the same benefits as Newton Police Officers.

The Union contends that it was disingenuous for the City, at arbitration, to withdraw its mediation proposals to address the subject of sick leave. The Union concludes that its proposal to address the subject of sick leave is reasonable and should be awarded.

City's Position

The City's position is that the current contract language should remain, and that there should be no changes with respect to the contract language on sick leave. The City states that Section 4.07, which provides that sick leave will not be paid "unless the City physician shall

find that the absence of such employee was justified by reason of sickness or injury", has been the contract standard for decades; it is the same standard that exists in all other city contracts, and reflects the language in the City's ordinances. The City states that the fact that this contract language is the status quo for other City Employees compels the conclusion that there should be no change to the current contract language.

The City maintains that this contract language allows the Department to monitor sick leave and utilize the tools of this section when it believes that there is an excessive use of sick leave. The City states that firefighter sick leave has a direct impact on overtime costs in the Department. The City asserts that it utilized the language of Section 4.07 when the City believed that there was an excessive use of sick leave by members of the bargaining unit at the beginning of fiscal year 2004, when there was a rising cost of overtime expenditures. The City states that when it specifically enforced the provision of Section 4.07 in the summer of 2004 there was a dramatic decrease in sick leave, and overtime expenses also decreased. In view of these facts, the City asserts that there is no reason to adopt the elaborate process proposed by the Union to administer sick leave. The City argues that the Union's proposal creates an artificial and overly complicated system to address use of sick leave, and there should be no change to the status quo.

The City also opposes the Union's proposal to add an enhanced longevity plan as currently exists for Newton Police and Police Superiors. The City contends that in 2001 the City and Firefighters agreed to an enhanced longevity

program, which was conditioned upon overtime usage. The City states that because of overtime usage, the plan was eliminated. The City maintains that there is no justification to revisit the issue of an enhance longevity benefit since firefighters could not abide by the conditions of the prior program.

Discussion

I. Sick Leave Usage

There can be no dispute that the issue of sick leave for Newton firefighters has been the most contentious issue during this round of contract negotiations. The City, in 2003, as the City acknowledges, decided to require all firefighters, if they took special leave ("sick leave"), to see the City physician, or their own physician to obtain a medical note; the City physician then had to review the certificate in order for the firefighter to be paid for his or her sick leave. This requirement pertained to all firefighters no matter what the reason for the illness or personal circumstances, and applied even if there was no claim that the firefighter was abusing or using excessive sick leave.

The City maintained then, as it does now, that Section 4.07 allowed it to send all firefighters using sick leave to the City physician to be eligible to be paid for their sick leave. The Union grieved this action contending that the City never required that all firefighters must see the City physician before they have access to their accumulated sick leave. Three days of arbitration hearings were conducted, and more were to be scheduled. The parties mutually agreed that instead of pursuing the grievance arbitration hearings they would defer the contract

grievance. Instead the parties agreed to mediate the subject matter of sick leave usage, and they would do so as part of their contract negotiations to reach a successor Agreement. The parties further agreed that the undersigned neutral arbitrator would serve as the mediator for the successor agreement, and that if agreement was not reached he would then serve as the interest arbitrator for the unresolved Agreement under the JLMC's jurisdiction.

Nine days of mediation ensued, and tentative agreements were reached on a number of significant issues. In particular, because of the protracted length of the dispute, and the fact that the last agreement expired on June 30, 2003, the parties agreed to adopt two three-year agreements and that the salary increases would be the so-called "City pattern" for wage increases. As a result, the issue of salary increases for the six-year period of time is not an issue in this proceeding. Proposals and counter proposals were made during mediation on the topic of sick leave. Nonetheless, an overall agreement on the subject of sick leave could not be achieved during mediation.

The unanimous opinion of this Arbitration panel is that use of sick leave must be addressed in a meaningful way in this proceeding, and that there must be some modification to the City's current practice of requiring all firefighters, no matter what the circumstances, to visit the City physician before being eligible for paid sick leave. In particular, this issue is divisive; as it resulted in many days of grievance arbitration and has impacted the stability of labor relations between the Firefighters Union and the City. It must also be stated that during mediation both the City and Union made

proposals to address this contentious issue in a manner that preserves the City managerial right to ensure that employees do not abuse sick leave while ensuring the rights of employees to be paid for their sick leave when they are legitimately ill.

It is also important to point out that use of sick leave was previously an issue with the Newton police officers. Specifically, during the 1997-2000 contract period the City changed the practice of sick leave usage for Newton Police officers. This change resulted in a grievance that was scheduled for arbitration as well as an unfair labor practice charge filed with the State Labor Relations Commission. The Police and City agreed to resolve the arbitration and the unfair labor practice charges by agreeing upon a memorandum of understanding that was then attached to the 2000-2003 Agreement. The parties agreed that the two officers who were denied paid sick leave would be paid for the days, that an advisory committee would be composed to review the use of sick leave, and that the "City may continue to utilize Article IV, Section 4.07 to have any unit members suspected of excessive absenteeism examined by the City physician."

For the 2000-2003 Agreement the Police and City agreed to add the following provision to Article IV,

4.04 Sick Leave Certification - Effective August 1, 2002, when an officer has used more than three consecutive days of special leave due to illness or injury, he/she shall be required to submit written certification from a physician or nurse practitioner designated by the City clearing such officer for return to work.

At the officers' option, such certification shall be obtained from the officers' personal physician in lieu of the physician or nurse practitioner designated by the City.

When returning to work after using more than three consecutive days of special leave due to illness or injury, and such return falls on a Friday last half), a weekend, or a holiday, such officer shall return to work without certification, but shall obtain and submit the certification at the earliest possible date after the date of such return.

This language remains in the current Police Agreement. In addition, Section 4.08, (the same as Section 4.07 in the Firefighters Agreement - City Physician language) still remains in the Police Agreement.

It is significant that the Police, though not agreeing to delete the section with respect to the City physician certification (Section 4.08), nonetheless agreed to a unique process that would be utilized so that not each and every absence for each and every police officer would require a visit the City physician before a police officer could be paid for use of sick leave. For the police, medical certification was required only after three consecutive days. Thus, it is not the case that all city employees are required to see the City physician prior to receiving paid sick days. It is this approach of balancing the City's interest with an employee's right to be paid for sick leave for legitimate purposes that must be part of the Firefighters Agreement.

AWARD SICK LEAVE SECTION 4.07

Section 4.07 shall remain in the current Agreement. Added as subsections to Section 4.07 shall be the following method for verifying sick leave:

a) The Fire Chief, in his or her discretion, may decide that an employee's receipt of compensation for a sick leave absence will be subject to City Physician approval (the Section 4.07 process). The Chief must have legitimate reasons (such as reason to believe that an employee is abusing sick leave or using an excessive amount of sick leave) for subjecting an employee to the Section 4.07 process.

b) If the Chief decides to subject an employee's entitlement to compensation to City Physician approval and/or if the City Physician denies such compensation in any given instance, imposition of the City Physician approval process and/or withholding of compensation based upon City Physician's lack of approval shall be subject to expedited arbitration.

c) If the parties are unable to agree upon an arbitrator, they shall use the expedited procedures of the American Arbitration Association to select the neutral arbitrator. The arbitration hereunder shall be expedited, with immediate submission of the dispute to the Arbitrator (no requirement to use pre-arbitration grievance steps), with agreement to expedite scheduling, and to complete the case in one (1) day, inclusive of submission by oral argument in lieu of written briefs.

II. Grievance on Sick Leave

Discussion

As mentioned above, the Union filed a grievance contesting the City's decision to require all Newton Firefighters to visit the City physician or submit a doctor's note prior to being paid for sick leave. The arbitration occurred over three days and was put in abeyance as the parties agreed to mediate the subject of sick leave as part of a successor collective bargaining agreement. The Union now proposes that the City should pay

those employees who were docked pay due to the City's action. The City opposes the Union's proposal.

The Panel concludes that the grievance on the subject of sick leave must be withdrawn by the Union. The issue of sick leave has been too divisive to the stable and productive labor relation of the parties. The Panel believes that it would be inappropriate to award the Union all monies that it would have obtained if the grievance were sustained. As a compromise those firefighters who have since retired and were docked pay as a result of the City's action should be made whole for lost pay.

AWARD - SICK LEAVE GRIEVANCE

The sick leave grievance that was deferred pending mediation of the successor Agreement must be withdrawn, with prejudice, by the Union. Employees who were docked pay and have since retired shall be made whole if they lost pay as a result of the City's action.

III. Exceptional Service Recognition Plan

The Firefighters and City agreed to an Enhanced Longevity Recognition Plan (ELRP) that provided for increases to an employee's base wage for three years if the employee had twenty years of service and at least 50 twenty-four hour tours of special leave accumulated. The program was contingent upon overtime expenditures of the Fire Department. If overtime went to certain levels the program ceased. The program was put in place beginning 2001. The City maintains that the overtime exceeded the agreed upon cap, and the program ceased. The Union grieved the elimination of the grievance and that matter was submitted to arbitration. An arbitrator ruled for the City,

and the program ceased. The City maintains that the ELRP program cost the City \$224,000 in FY 2002 and \$260,000 in FY 2003, before the program ceased.

The Police Patrol Officers and Police Superiors also agreed to an enhanced longevity program in 2001. The police program was less elaborate and provided that if officers had twenty years of service and 150 days of sick leave officers would be eligible for an 8% increase in their pay for a three year period of time. The program was not conditioned upon overtime expenditures and remains in their most recent agreement. The City states that the cost of the Police program was \$53,000 when the program started in FY 2002, but the amounts have decreased to an average of \$36,000 as fewer participants participate in the program. Specifically, the Police programs provided for a decreasing number of employees eligible for the program each year of the program. As of the last Agreements, the program was limited to ten Patrol Officers and three Superior Officers.

The more elaborate and more expensive enhanced longevity program previously in place for the firefighters was lost in arbitration and will not be restored. There is no good reason, however, why the basic enhanced longevity program that now exists for Newton Police and Newton Police Superior Officers who have twenty years of service, should not be made available to those Newton Firefighters in identical circumstances (twenty or more years of service and 75 tours of accumulated special leave since firefighters tour of duty is 24 hours). In addition the maximum number of firefighters eligible under the program shall be 13 members of the bargaining unit (the total number that currently exists for both police officers and

police superiors). In all other respects the enhanced longevity program for firefighters should mirror the program that is in place for Newton Police and Newton Firefighters.

AWARD - ENHANCED LONGEVITY PROGRAM

The parties shall add to the Agreement an Enhanced Longevity program that provides that Newton Firefighters with twenty or more years of service and seventy-five tours of accumulated special leave shall be entitled to participate in the Exceptional Service Recognition Plan. The Plan shall be limited to 13 firefighters per year. In addition the Plan shall provide the same benefits and contain the same restrictions that currently exist in the Enhanced Longevity program in place for Newton Police. Notification requirements (September 1, of the fiscal year prior to the year the employee wishes to begin receiving benefits) shall be the same, except that notification for 2008-2009 shall be sixty days after execution of this Award with benefits to begin for the next fiscal year.

8. Filling of Vacancies

Section 16.02 of the current Agreement provides that the "City shall continue to anticipate and plan for filling vacancies in officer ranks and shall endeavor to have a promotion as soon as practicable after a vacancy occurs." Section 16.03 provides that the City "shall continue to anticipate and plan for filling vacancies in the rank of firefighter."

Union Position

The Union proposes to add the following language to the Agreement:

Provide for the posting of working group and company vacancies caused by retirement, death, transfer, promotion or termination of incumbents and for the filling of such vacancies by the senior-most bidder. Establish a form for the posting, a schedule for the department-wide posting, for employee submission of bids by negotiated form, and for the award of such vacancy to the senior-most bidder, and for repetition of such procedure to fill the position vacated by the successful bidder. Vacancies remaining unfilled pursuant to this procedure can be filled by the Chief by the transfer of employees in applicable rank in the inverse order of seniority. (Effective upon ratification of contracts).

The Union maintains that its proposal provides for filling of vacancies with the most senior bidder. The Union contends that it is reasonable to have a posting procedure for filling vacancies, and that it is appropriate that seniority be used as the criteria to fill the vacant positions.

City Position

The City opposes the Union's proposal. The City contends that the Union's proposal would change the existing practice. Specifically, the City maintains that seniority has never been the only factor used to fill vacancies in working groups or companies. Rather the Chief has had the discretion to fill these positions.

Discussion

There is insufficient justification to award the Union's proposal at this time. Specifically, this is not a topic that generated any discussion during the parties' negotiations or during mediation. Moreover, there is no suggestion that there have been problems with the current practice. Nor can it be said that the Union's proposal is

common contract language for other fire departments. The Union's proposal is not awarded.

AWARD - FILLING OF VACANCIES

The Union's proposal is not awarded.

9. Injury Leave

Article IVB sets forth the provisions for injury leave and limited duty for members of the bargaining unit.

Union Position

The Union proposes to add the following provision to the parties' Agreement.

Amend contract to provide a presumption of work caused relationship for incapacitation caused by heart, lung, cardiovascular, cancer and contagious disease.

Amend the Section 48.02 contractual limited duty provision, as employee option, can be applied equally to non-job related (sick leave) illness or injury.

Amend Section 48.02 to provide that at employee option, the limited duty schedule shall be four (4) ten (10) hour workdays each week.

(All of the injury leave related proposals are to be effective upon ratification of contract)

City's Position

The City opposes the Union's proposal.

Discussion

The Union's proposal cannot be awarded. In particular, there is no evidence that the presumption that now applies for disability retirement is a prevailing contract provision when Massachusetts' firefighters are placed on injury leave. In addition there is no suggestion that Newton Police have the provisions proposed by the Union in their Agreement.

AWARD - INJURY LEAVE

The Union's proposal to amend the current contract provision is not awarded.

CITY ISSUES

1. Random Drug and Alcohol Testing Program

The Current Agreement, Article 35, contains a comprehensive reasonable cause drug-screening program. There is no provision in the Agreement for random drug and alcohol testing of Newton Firefighters.

City Position

The City proposes to add to the parties' Agreement a "random drug and alcohol testing program modeled on the City's DPW program, which is a CDL/DOT program.

The City maintains that a random drug and alcohol program is an "essential tool" to assist the City in ensuring the safety of its firefighters and citizens. The City acknowledges that this was not one of its original proposals made in 2006, but states that the unique and protracted bargaining history and events occurring in the City of Boston in August of 2007 warrant the City's proposal at this time. More specifically, the City states that when it made its original proposals and the parties engaged in direct negotiations the parties were only considering a three year agreement for the period of 2003-2006, but when mediation ensued the parties then began discussions two, three year agreements, one for 2003-2006 and the other for 2006-2009, thus there was never a chance to make language proposals for the second three year

agreement. In addition, the City states that the tragedy in Boston in August of 2007, when two Boston Firefighters died in a fire in West Roxbury, has made the issue of random drug and alcohol testing an emergent public safety issue and a major public concern.

The City contends that the parties should not wait until a tragedy befalls a firefighter or citizen before implementing a reasonable random drug and alcohol-screening program. The City cites recent editorials of the major Boston newspapers, public comments from the President of the Boston Firefighters' Union, conclusions of the Boston Fire Department Independent Review Panel, and Boston Fire Department's Official Board of Inquiry, all of which support random drug and alcohol testing as a condition of employment for Boston Firefighters.

The City also maintains that the concerns about drug and alcohol use are also an issue with Newton Fire fighters, and cites cases of Newton Firefighters over the past nine years who have been directed to counseling or treatment. The City states that these instances only came to the City's attention from off-duty conduct, and these situations, the City maintains, further demonstrate that a random testing program would assist the City in identifying other instances of drug or alcohol abuse. The City concludes that its proposal for a random drug and alcohol-testing program is justified and should be awarded by the panel.

Union's Position

The Union opposes the City's proposal to include a random drug and alcohol-screening program for members of the bargaining unit. The Union first states that the issue

of random drug and alcohol testing was not an issue presented by the City in its original proposals. It was not a topic in the parties' direct negotiations, nor an issue in the mediation sessions, and did not appear until after mediation was concluded and the parties presented issues to the JLMC in the late Fall of 2007, just prior to the JLMC authorizing the dispute to arbitration. The Union asserts that it is inappropriate and detrimental to sound labor relations to present an issue of this magnitude to be resolved in arbitration when there have been absolutely no discussions on the topic prior to the arbitration hearing.

The Union further contends that there now exists a "reasonable suspicion" drug testing procedure in the parties' Agreement, and there has been no suggestions or any evidence that the current provisions have been ineffective. The Union also states that at the present time there is no random testing program for Newton Police Officers. The Union further asserts that firefighters are exempt from Federal CDL license requirements. In addition, the Union states that no other fire departments in the seven contiguous communities have random drug and alcohol testing programs as now proposed by the City.

The Union further states that the City's memory of certain employees being involved in off-duty conduct which resulted in referrals to treatment or counseling does not warrant a random testing program at this time. The Union states that these instances occurred over a nine year time period, and involved a very small number of bargaining unit employees. Moreover, the Union states that despite these instances the City never once proposed to negotiate over a random testing program, and the issue was only raised at

the outset of the arbitration proceedings. The Union states that the tragedy in Boston arising out of the alleged toxicology reports of two firefighters who perished in a fire, does not nullify the need to negotiate over the subject matter, and that this controversial subject should not be addressed in this proceeding.

Discussion

There is no dispute as to the notoriety of the tragedy in Boston, where it came to the public's attention through newspaper and television reports based on leaked autopsy reports, that two firefighters, who perished in a fire, one firefighter tested positive for cocaine and another was above the legal alcohol limits. According to newspaper articles submitted in this proceeding the City of Boston proposed random drug and alcohol testing for its firefighters. The controversy over these negotiations continues to be reported in the local news media.

It is important to consider the context for the subject of random drug and alcohol testing as it pertains to the specific negotiations of the City of Newton and Newton Firefighters. The negotiations between the parties have been protracted; the prior agreement expired on June 30, 2003. Initially, the parties' proposals related to a three-year period of time (2003-2006), and, as the contract negotiations did not result in a three year agreement, the parties then agreed to discuss the format for two, three year agreements (2003-2006 and 2006-2009). Indeed, the parties agreed to the basic wage pattern for the six year period of time. One can understand the City's contention that due to the protracted time period during this round of negotiations it should not be foreclosed from bringing to

the negotiation table issues that arose after it first began negotiations in 2005. Nonetheless, for a number of reasons the City's proposal can not be awarded.

It is not within this Panel's authority to conclude that the City is now foreclosed from raising this issue in arbitration. There is no dispute, however, that during the parties' direct negotiations and during mediation there was never any City proposal or discussions on the subject of random drug and alcohol testing. The absence of any direct negotiations or discussions in mediation over this controversial subject matter makes it difficult for this panel to address this subject at the stage of interest arbitration. Moreover, at this time there is now just one year remaining until the expiration of this second, three year agreement. This is certainly a topic that can be raised during the next round of contract negotiations should the City wish to propose this matter for successor Agreement.

The City states that at the present time Newton DPW employees with CDL licenses are subject to random tests; this is required under Federal Law. Firefighters are not subject to Department of Transportation licensing requirements. At this time, the Newton Police Officers do not have random testing but the same as Newton Firefighters have a program of testing for reasonable suspicion. There is no evidence that there are problems with the current testing program for the Fire Department. Moreover, there is no evidence that random programs are a prevailing condition of employment for firefighters or other Massachusetts public safety employees. No contracts were presented that contain such testing programs. Thus, this is not a

situation in which the panel can review competing proposals of the parties and review the merits of such proposals based on standards set forth in other agreements.

Finally, the issue of random testing is not only controversial, but also impacts the constitutional rights of public employees. Specifically, in GUINEY v. POLICE COMMISSIONER OF BOSTON, 411 Mass. 328; 582 N.E.2d 523 (1991) the Massachusetts Supreme Judicial Court overturned random testing for Boston police officers. The SJC stated

. . . it should not infer or assume the existence of facts that might justify the governmental intrusion. The reasonableness of a mandated urinalysis cannot fairly be supported by unsubstantiated possibilities. If the government is to meet the requirements of art. 14, it must show at least a concrete, substantial governmental interest that will be well served by imposing random urinalysis on unconsenting citizens. 411 Mass 328, at 332.

Based on this record, and for the reasons set forth more fully above, this Arbitration Panel will not award a random CDL testing program.

AWARD - RANDOM DRUG AND ALCOHOL TESTING

The City's proposal for random drug testing based on a CDL type-testing program is not awarded.

2. Eliminate Winter Manning

Article XXX, Coverage, of the current Agreement reads as follows:

30.00 (A) No fewer than four (4) fire suppression employees on any ladder shall respond to an alarm. No fewer than three (3) fire suppression employees on any engine shall respond to an alarm, except that no fewer

than four (4) fire suppression employees shall respond to an alarm from January through March.

30.01 (B) In addition to, and notwithstanding the foregoing per piece manning requirements (Section 31.01 (A) which result in the following shift-wide minimum on-duty complement of fire suppression employees based upon the number of fire suppression pieces in service as of the execution of this AGREEMENT, the Association and the City further agree that, subject to the annual fiscal year municipal funding discretion, the shift-wide minimum on-duty fire suppression complement during all tours of duty shall be as follows: thirty-three (33) fire suppression employees during the months of April through December; and, forty (40) fire suppression employees during the months of January through March.

30.02 Whenever minimum coverage as required by paragraph 31.01 cannot be met by deployment of on-duty fire suppression employees, off-duty employees will be called back on an overtime basis, at an hourly rate of one and one-half times the employee's average hourly rate of pay.

City Position

The City proposes to delete the provisions in Section 30.00 (A) that provide that the responding pieces of apparatus must have no fewer than four fire suppression employees during the months of January through March.

The City contends that as opposed to having guaranteed levels of per piece staffing, the discretion as to appropriate per piece staffing during the winter months should be left to the Chief, as it may not be necessary every day in the winter months to have four firefighters assigned to a piece of equipment. The City states that Newton is the only fire department in the Greater Boston area that requires additional per piece staffing during certain winter months. Moreover, the City states that at

the present time the Newton Fire Department sends more responders to an average fire than other metro communities.

The City further states that the current winter staffing has significant impact on overtime, and that from 1997 through 2007 winter manning, which occurs over three months, accounts for 50% of the overtime usage. The City contends that if winter manning levels were left to the Chief's discretion based on day-to-day needs of the Department and City, overtime costs of the City would be lowered. The City concludes that the unique provisions for winter manning should be eliminated from the Agreement.

Union Position

The Union opposes the City's request. First, the Union maintains that the City neither proposed this issue in direct negotiations, nor was this a subject that was discussed in mediation, and should not now be addressed at arbitration. The Union maintains that since 1975 there has been a practice and contract provisions addressing different staffing levels for winter months. The Union states that in 1993 Arbitrator Healy found merit to staffing apparatus with four firefighters for three winter months, and three firefighters for the remainder of the year. The Union states that although the parties agreed to change which months would constitute the winter months, the rationale for winter staffing remains as viable today as it was when the issue was addressed by Arbitrator Healy fifteen years ago.

The Union further states that in 2005, the City deactivated Engine 6, and as a result saved considerable money, but as a result the workload of firefighters increased. The Union further contends that when Engine 6

was taken out of service the City told the Union that it would not change per-piece staffing levels. The Union also stated that there is no longer a contractual commitment for per-shift staffing as this was eliminated when the City deactivated Engine 6 from service; the City has the discretion to take pieces out of service if it seeks to save overtime. The Union also argues that the current staffing levels for the Newton Fire Department fail to meet staffing levels suggested in independent studies prepared for the City, and that there is no justification to change the current per-piece staffing levels.

Discussion

The record shows that the issue of winter staffing levels for the Newton Fire Department has a long history. The parties' Agreement, since at least 1975, contained provisions requiring higher levels of staffing per piece during winter months. In 1993 the last time the parties had their Agreement resolved in interest arbitration, Arbitrator Healy awarded winter staffing with four suppression employees per engine company for three winter months. In 1998 the Union and City agreed to change what months would be considered the winter months.

It must be remembered that the panel is not approaching the subject of winter staffing as a brand new topic, which has not been the subject of prior negotiations and not part of the parties' Agreement. In view of the long history of on this issue, there must be some substantial justification to change the status quo. This issue was not addressed in the parties' most recent direct negotiations nor was it a subject explored in any detail in mediation. In the present case the record does not support changing

the longstanding practice and provisions of the current Agreement. For these reasons the Panel will not award the City's proposal to change winter per-piece staffing levels.

AWARD - WINTER STAFFING LEVELS

The City's proposal to change the current contract language on winter staffing is not awarded.

3. Shift Differential

Section 2 of Night Differential set forth in Appendix A reads:

Effective January 1, 1996, the night differential shall be seven percent (7%) per hour of the straight time hourly wage for all 6:00 p.m. to 8:00 a.m. hours the employee's group is regularly scheduled to work, whether or not the employee works such tours, and for all paid leaves. Night differential shall be paid on a monthly basis.

City Position

The City proposes that the shift differential be paid only to employees who actually work the hours of 7:00 p.m. to 7:00 a.m. and not paid to employees who do not work the hours. The City maintains that the purpose of a night shift differential is to compensate employees who actually work less desirable hours, and should not be paid to employees who are absent from work due to vacation sick leave or other type of paid leave.

The City states that the shift differential was put into place in an interest arbitration award issued in 1993, because it was a form of income supplement and existed in other communities. The City states that to continue this benefit there should be more of a justification than this benefit is provided in other communities. The City states

that night shift differential should be paid only to those employees who actually work the less desirable hours.

Union Position

The Union opposes the City's position. First, the Union states that at the present time Newton Firefighters just like Newton Police Officers are paid night shift differential and receive the shift differential even when they are on a paid leave of absence. In addition, the Union maintains that the methodology of paying for scheduled night hours is also the prevailing practice for the Departments in the seven contiguous communities. The Union argues that there is insufficient justification to reduce the compensation levels of Newton Firefighters.

Discussion

The evidence demonstrates that the present method for paying night differential for Newton Firefighters has been in place since 1993, when it was first awarded in the Healy Arbitration Award. At the present time Newton Police officers are paid the night differential when they are on paid leaves of absence, exactly like Newton Firefighters. Moreover, the evidence demonstrates that this method of paying night differential is the prevailing practice for all seven fire departments contiguous to Newton. There is insufficient justification to change the longstanding practice of paying night differential to Newton Firefighters.

AWARD - NIGHT SHIFT DIFFERENTIAL

The City's proposal is not awarded.

4. Fire Prevention and Training Division Pay

At the present time bargaining unit members who work in the Fire Prevention and Training Division receive a stipend of \$1,000.00.

City's Position

The City proposes to increase the annual stipend for employees working in the Fire Prevention and Training Division. The Lieutenant would be paid \$7,500.00, the Captain \$8,500.00 and Deputy Chief \$9,500.00. The Chief explained that he needs the higher stipend to motivate employees to remain in these important positions.

Union's Position

At the hearing the Union did not oppose the City's proposal.

Discussion

As the Chief explained there is justification to increase the stipend to the rates proposed by the City.

Award - Stipend Fire Prevention and Training Division

The City's proposal to increase the stipends for positions in the Fire Prevention and Training Division are awarded. The increases shall be effective July 1, 2008.

5. Twelve Hour Work Shifts

Article XXI of the parties' Agreement sets forth the work week for members of the bargaining unit. The current provision provides that employees' workweek will average 42 hours over an eight-week cycle. In addition, Section 21.02 provides that firefighters will be assigned to fire suppression work for a twenty-four hour schedule. The twenty-four hour schedule went into effect January 1994.

City Position

The City proposes to eliminate the twenty-four hour schedule and in its place have fire fighters work four twelve-hour shifts. The City states that the twenty-four hour schedule was implemented in the Department as a result of the 1993 Healy Award, and at that time Newton was one of the first communities to schedule firefighters to work a twenty-four hour schedule. The City maintains that part of the justification of Arbitrator Healy's Award was that the Chief of the Department at that time, Joseph Danielle, did not object to the 24-hour schedule, and that it was implemented with approval of the Chief. The City states that in an affidavit submitted by Chief Danielle in this proceeding, he now acknowledges that he "was dead wrong" as to his prior opinion of the 24-hour shift, and that it has created a "host of problems".

The City further maintains that the problems from the 24 hour shift include the following: difficulty in training; equipment checks have been difficult, firefighters since they only work two days a week, now live farther away from the City. The 24-hour schedule has also contributed to increased sick leave usage, which then causes significant overtime expenditures. The City states that Newton was at the forefront when the 24-hour schedule was adopted, as a result of an interest arbitration award, when Chief Danielle then supported it. The City maintains that the passage of time has demonstrated that the 24-hour schedule has caused significant problems, and Chief Danielle has now changed his mind about the utility of a 24-hour schedule. The City maintains that this arbitration

panel should again place Newton at the forefront, and the 24-hour schedule should be eliminated.

Union's Position

The Union opposes the City's proposal. The Union states that the only evidence to support eliminating the twenty-hour shift was an affidavit from the former Chief of the Department, when the 24 hour schedule was adopted, in which he maintains that the 24 hour schedule was a mistake, and is no longer supported by a majority of Massachusetts Fire Chiefs. The Union states that at the present time all contiguous communities, except for Boston, have in place the 24-hour work schedule. Moreover, the Union asserts that the 24 hour schedule is now the prevailing work schedule for firefighters in Massachusetts, as 132 of 199 fire departments have the 24 hour work schedule; only 3 fire departments in the State work a 12 hour schedule, as has been proposed by the City.

Discussion

The City seeks to change the 24 hour work schedule that has now been in place for approximately fifteen years. While it is true that this schedule was adopted as a result of an interest arbitration award, this does not mean that this schedule must now be changed in this interest arbitration proceeding. While Newton may have been in the forefront when the 24-hour schedule was first adopted in 1994, the 24-hour schedule is now the prevailing working condition for Massachusetts' fire departments. There are only three departments that have two twelve hours shifts as proposed by the City. Moreover, in all contiguous communities, except for Boston, the 24-hour schedule is the standard work schedule. Moreover, there is no evidence that

any departments have changed from the 24-hour schedule to two 12 hour shifts. In sum, there is insufficient justification to move away from the 24-hour work shifts.

AWARD - TWELVE HOUR WORK SHIFTS

The City's proposal is not awarded.

6. IOD Policy

Article IVB sets forth the current Injury Leave and Limited Duty provisions.

City Position

The City proposes to revise the injury on-duty reporting procedures. The City's proposal reads as follows:

The following are requirements all fire personnel must adhere to when an employee suffers an injury in the performance of his/her duty.

1) An employee who sustains an injury in the performance of his/her duty shall immediately notify the on-duty deputy chief and obtain necessary medical treatment as stated below. Any employee that does not seek medical attention as follows will not be considered "injured on duty".

Medical attention shall be obtained as follows:

a) Monday - Friday 0800-1600 hours go to Health at Work located at Children's Hospital of Waltham (formerly Waltham Hospital), 9 Hope Avenue, Waltham, MA.

b) After hours or for a severe injury. Go to the emergency room at Newton Wellesley Hospital.

2) The injured employee's immediate on-duty officer shall investigate the cause of the injury and submit a report to the chief of the department accompanied with a witness report.

3) The injured fire employee shall, when physically able to do so, submit a written report detailing exactly how the injury occurred.

4) If the fire employee is unable to report back to duty, he/she will notify the on-duty deputy chief who shall record the employee as "sick" on the daily lineup, pending determination of eligibility for injury status.

5) Prior to returning to full duty, the employee must be approved for duty by the City Physician or the physician's designee. However, if the City Physician or physicians designee determines that the fire personnel is capable of performing limited fire duties, the chief or his designee may assign said employee to perform such duties, as specified in the contract.

6) Once the employee has been determined by the City Physician or his designee capable of returning to full duty, that specific injury incident shall be considered concluded. There shall be no "recurrence" of that specific injury without some new intervening circumstances. In which case all of the above procedures must be complied with.

The City states that its proposal provides a reasonable process for reporting workplace injuries to ensure that a firefighter's injuries are examined and assessed by medical professionals in a timely manner. The City further states that its proposal would ensure that injury leave benefits are reviewed and paid more quickly, that firefighters are assessed by appropriate medical specialists, and that controls would be in place to identify circumstances where injury leave may not be warranted.

Union Position

The Union first claims that it discussed the issue of modifying the IOD procedures, contingent on receiving a

\$500.00 training stipend, which the police received in the their agreement, as a result of settling an unfair labor practice charge. The Union states that it made a counter proposal on the subject of IOD procedures, which reads as follows:

Section 4B.04: Amend by adding at end:

"and shall be provided or shall seek appropriate medical attention pursuant to the following:

In the event of severe injury requiring immediate, emergency medical attention, the employee shall be transported to an appropriately credentialed emergency medical facility, considering the nature of the injury;

If the injury is not of a severity requiring such immediate - emergency medical attention, the employee can elect to go to Health at Work, located at Children's Hospital of Waltham, 9 Hope Avenue, Waltham, MA, or to the employee's health care provider.

The injured employee's immediate on duty officer/senior man shall investigate the cause of injury and shall submit a report, including witness statement, if available, to the Chief of Department; The injured employee, when able to do so, shall submit a written report to the Chief of Department detailing exactly how the injury occurred; Employees shall have the right to make decisions regarding their health care.

The Union states that its proposal was based on the quid pro quo of receiving a \$500.00 training stipend. At this point in the protracted negotiations the Union states that it would be willing to forego the training stipend rather than agree to the City's proposal, which it believes is seriously flawed.

The Union maintains that the City's proposed language requires that an injured firefighter must go to a designated facility. The Union contends that in the case of an emergency the firefighter should be transported to the appropriate facility as determined by the appropriate professionals. In addition the Union states that the City's proposal is based on language in a police general order, but the Union states that not all provisions of the police policy are actually followed by the police department.

Discussion

It is reasonable that the Department should have procedures in place with respect to reporting and keeping the Department apprised of the status of an employee's work related injury. Moreover, it cannot be concluded that reporting procedures can be considered as an economic concession that would justify granting bargaining unit members an additional stipend. At the present time Article 4B contains provisions for "Injury Leave and Limited Duty" for firefighters who are injured at work. More specifically, Article 4B.04 requires that the firefighter notify the Chief, or the Chief's designee, of an injury.

Upon review of the parties' proposals and the existing contract language, the Panel concludes that Section 4B.04 can be clarified to ensure that injured firefighters receive appropriate medical care as well as the City's interest in ensuring that the work related injuries are properly reported to management of the Fire Department.

AWARD - INJURY LEAVE

Section 4B.04: Amend by adding at end:

and shall be provided or shall seek appropriate medical attention pursuant to the following:

In the event of severe injury requiring immediate, emergency medical attention, the employee shall be transported to an appropriately credentialed emergency medical facility, considering the nature of the injury;

If the injury is not of a severity requiring such immediate emergency medical attention, the employee can elect to go to Health at Work, located at Children's Hospital of Waltham, 9 Hope Avenue, Waltham, MA, or to the employee's health care provider. If the employee goes to his or health care provider he or she shall report this to the injured employee's immediate on duty officer/senior man.

The injured employee's immediate on duty officer/senior man shall investigate the cause of injury and shall submit a report, including witness statement, if available, to the Chief of Department; The injured employee, when able to do so, shall submit a written report to the Chief of Department detailing exactly how the injury occurred;

If the fire employee is unable to report back to duty, he/she will notify the on-duty deputy chief who shall record the employee as "sick" on the daily lineup, pending determination of eligibility for injury status. Disputes over whether an employee is eligible for injury leave shall be handled in an expedited manner.

Prior to returning to full duty, the employee must submit medical documentation to the City Physician. If the City's Physician disagrees with the employee's medical provider that the firefighter can return to full duty, the dispute resolution process set forth in Section 4B.05 shall be followed.

7. Delete Evergreen Clause

Article XXXVII, provides that the existing agreement will continue in force and effect until the new agreement is executed and implemented.

City Position

The City proposes to delete the current "evergreen clause". The City states that under the current clause the Union is still permitted to pursue arbitration even if the Agreement expires. The City maintains that the evergreen clause has contributed to the current protracted negotiations and should be deleted. The City further maintains that as compared with all other City unions, only the Firefighter's agreement has language that provides that terms and conditions of employee must continue until a new agreement is reached.

Union Position

The Union states that the current provision has been in the parties' Agreement for many years. The Union disputes that the existence of this provision has contributed to the protracted negotiations.

Discussion

The City is asking this arbitration panel to delete a contract provision that has been in place for many years. While it is true that these negotiations have been protracted, it cannot be concluded that this provision has caused or contributed to the delay. The parties should be able to have recourse to the grievance arbitration procedures over disputes even if the contract negotiations have been difficult and protracted. There is insufficient justification to delete this long-standing contract provision.

AWARD - EVERGREEN CLAUSE

The City's proposal to delete the evergreen language in Article XXXVII is not awarded.

8. Semi-monthly Payrolls

At the present time the City pays employees on a weekly basis.

City Position

The City proposes to pay employees on a semi-monthly basis, 24 payments a year. The City maintains that this change will provide administrative cost savings. The City states that teachers now have a semi-monthly payroll and it has proposed a semi-monthly payroll for other City employees.

Union Position

The Union would agree that new employees could be paid on a semi-monthly basis.

Discussion

At this time no other City employees (non-school district employees) are paid on a semi-monthly payroll. The Union's proposal that would allow the City to implement semi-monthly payroll for new employees is reasonable. If other City employees are paid on a semi-monthly basis the parties can revisit the issue for the next contract period, which commences July of 2009.

AWARD - SEMI-MONTHLY PAY

The City may implement semi-monthly payroll periods for new employees after the execution of this Award.

9. Out of Grade Pay

Section 5 of Appendix A sets forth detailed provisions when firefighters are paid out of grade pay for working in higher rated positions.

City Position

The City proposes to modify the current out of grade provisions of the Agreement. First, the City proposes to eliminate the provisions that provide that a Lieutenant will receive out-of grade pay when filling in for a Captain. Second, the City proposes to clarify that out-of-grade pay should not be triggered by a superior's absence due to union business, or due to administrative Fire Department business, and only for full-shift absences.

The City states that there is no need for a Lieutenant to fill for an absent Captain, since the Lieutenant already performs many of the duties of the Captain; if there is need to respond to an incident the Acting Lieutenant would always defer to the senior officer in charge, so that the Lieutenant would never be required to perform the duties of a Captain at a scene. The City concludes that there is no need to pay a Lieutenant higher pay when a Captain is absent.

The City further states that its proposal not to pay out of grade pay when an officer attends union business or administrative meetings is reasonable. The City points to a situation in which the Chief called a captain's meeting at headquarters and the Union maintained that the captains' attendance at the meeting warranted out of grade pay. The City maintains that out-of grade pay should only apply to situations for complete tour absences.

Union's Position

The Union opposes the City's proposal. The Union states that the City's proposal was not the subject of prior bargaining nor discussed in mediation, thus these matters should not be addressed by the Panel at the stage

of arbitration. The Union further states that there is no justification for the changes sought by the City. The Union also points to a grievance settlement between the parties on the issue of out of grade pay, in which the parties addressed the concerns of the City.

Discussion

There is insufficient justification to award any changes in the current out-of grade practices of the parties. First, this is a matter that was not previously addressed either during mediation or direct negotiations. Second, the parties did enter into a comprehensive grievance settlement in 2003 (3 pages in length) on the issue of out-of grade pay. It appears that the issues addressed in the grievance settlement touched upon the issues now raised by the City's proposal. Out of grade pay practices vary from Department to Department, thus it cannot be concluded that current practice is out of the norm. Accordingly, the City's proposal cannot be awarded at this time.

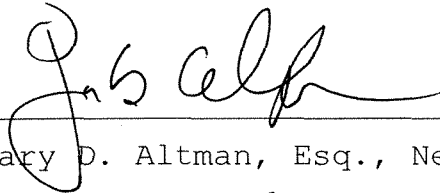
AWARD - OUT OF GRADE PAY

The City's proposal to modify the out of grade pay practices is not awarded.

Conclusion

As the neutral Chairman, I have no illusions that the preceding Award is perfect. I have considered the statutory criteria in an effort to balance the interests of the bargaining unit employees, the City and the citizens of the City of Newton. The reasoning set forth for each proposal is that of the neutral arbitrator.

Respectfully submitted,



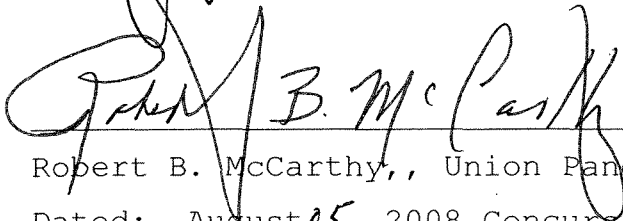
Gary D. Altman, Esq., Neutral Arbitrator

Dated: August⁰⁵, 2008



Mayor Dean J. Mazzarella, Management Panel Member

Dated: August⁰⁵, 2008 Concur in the Award



Robert B. McCarthy,, Union Panel Member

Dated: August⁰⁵, 2008 Concur in the Award